

## STATE OF VERMONT

In re ) Fair Hearing No. A-09/08-422  
 )  
 Appeal of )

# INTRODUCTION

The petitioner is a dual eligible Medicare/Medicaid recipient.<sup>1</sup> The petitioner receives treatment from a local mental health agency. The local mental health agency is under contract with the Department of Mental Health and, in certain circumstances, is considered a designated agency under the Global Commitment for Health Care.

The petitioner has a long history of depression. Petitioner has been prescribed Wellbutrin for approximately ten years to treat his depression. Recently, petitioner was assigned to a new psychiatrist at the local mental health agency. Petitioner's current psychiatrist has informed petitioner that he will only prescribe Wellbutrin if petitioner participates in counseling. Petitioner disagrees with his psychiatrist's treatment plan.

Petitioner filed a grievance on or about July 15, 2008 with the Department of Mental Health. Petitioner did not

<sup>1</sup> When an individual is eligible for both Medicare and Medicaid, Medicare Part D is the primary source for payment of prescriptions. Medicaid may cover co-pays, Medicare premiums, etc.

receive a response to his grievance and filed a request for fair hearing on or about September 18, 2008.

A telephone status conference was held on October 13, 2008 with the petitioner and counsel from the Department of Mental Health. Counsel from the Department of Mental Health indicated he was also representing the local mental health agency.

The Department questioned if the Human Services Board has jurisdiction in this case. A briefing schedule was set.

#### DISCUSSION

The Human Services Board was created by the Legislature to hear certain types of cases. The law states at 3 V.S.A. § 3091(a) that the following people can ask for fair hearings:

An applicant for or a recipient of assistance, benefits, or social services from the department for children and families, the office of Vermont health access, and the department of disability, aging and independent living, the division of mental health of the department of health, or an applicant for a license from one of those departments or offices...may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

The petitioner is asking the Board to overturn a clinical decision by a health provider. Our rules do not allow the Board to make this type of determination.

The petitioner argues that he is being denied a service. The Board has addressed medication issues in the context of whether the cost or use of a particular medication is covered under the Medicaid program; i.e. prior authorization cases. There is no question that Wellbutrin is covered by Medicaid. But, there is no basis in the statutes for the Board to substitute its judgment for the medical provider's judgment as to how to treat a particular patient. Questions regarding the quality of treatment are better left to the Boards governing medical practice.

The Department has raised other objections to jurisdiction. However, there is no need to address these arguments. Assuming arguendo that the local mental health agency was acting as a managed care organization, the issue reverts to whether the petitioner's complaint is that a service is being reduced or denied. Under the applicable statute, a service is not being denied or reduced. A medical provider's treatment decision is not the same as a denial of Medicaid coverage.

ORDER

The Department's motion to dismiss is granted.

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